IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD
(Special Original Jurisdiction)

THURSDAY, THE NINETEENTH DAY OF AUGUST
TWO THOUSAND AND TEN

PRESENT:

THE HON'BLE SRI JUSTICE NOUSHAD ALI

M.A.C.M.A.No.2705 of 2007

Between:

The National Insurance Company Limited, rep. by its Divisional Manager, Thiru-vi-ka Industrial, Mananji Centre, S-7, Chennai

..... APPELLANT

AND

Sindhe Srinivasa Rao and another

..... RESPONDENTS

a n d

M.A.C.M.A.No.1973 of 2006

Between:

Sindhe Srinivasa Rao

..... APPELLANT

AND

Gujjula Srinivasa Reddy and another

..... RESPONDENTS

COMMON JUDGMENT:

Both these appeals arise out of the same award in M.V.O.P.No.1277 of 2002, dated 04-07-2006 on the file of the Motor Accidents Claims Tribunal (District Judge), Guntur. MACMA

No.2705 of 2007 has been filed by the Insurance Company (Insurer) challenging the said award to the extent the award attached liability on it in a sum of Rs.4,09,200/- granted as compensation in favour of the claimant on account of the injuries sustained by him in a road accident.

MACMA No.1973 of 2006 has been filed by the claimant in the said O.P. claiming further enhancement of compensation. Hence, both the appeals are clubbed and disposed of by this common judgment.

2. Basically the Insurer has filed the appeal challenging the quantum of compensation. Even though in the grounds of appeal the Insurer is said to have obtained permission under Section 170 of the Motor Vehicles Act to contest the claim on the merits, on a perusal of record it does not appear that any such permission had actually been obtained. The learned counsel appearing for the claimant would represent that a petition was although filed in that regard, was rejected. It may be noted that even that order is not found in the record. However, having regard to the fact that both the parties have assailed the award with reference to the quantum, I deem it appropriate to proceed to consider whether the compensation as awarded is just and proper in the circumstances of the case.

3. The brief facts are that:

On 30-10-2002 a Tractor bearing registration No.AP-27-C-7691 was proceeding from Vangathula village to Khambham village with a load of gravel. When the said vehicle reached Besthavaripeta junction, Khambham village one of the tyres was punctured. The driver of the Tractor went to Khambham village and after vulcanizing the puncture returned along with the claimant. With his assistance, while fixing the tyre, a lorry bearing registration No.AP-27-U-8649 of which the first respondent in the

O.P. was the owner, driven in rash and negligent manner, hit the Tractor from behind, due to which the claimant sustained serious injuries to his right hand, left leg and multiple injuries on other parts. He, therefore, filed O.P. and sought for compensation of Rs.6,55,000/-.

4. The first respondent in the O.P. (owner of the lorry bearing No.AP-27-U-8649) remained ex parte. The vehicle since insured, the second respondent (Insurer) contested the claim.

5. The claimant adduced evidence by examining himself as PW-1 besides examining the Doctor as PW-2 and filed documents as Exs.A-1 (certified copy of First Information Report), Ex.A-2 (certified copy of charge sheet), Ex.A-3 (certified copy of wound certificate), Ex.A-4 (discharge certificate), Ex.A-5 (medical bills with prescriptions) and
Ex.A-6 (attested copy of degree certificate). Insurer did not adduce any evidence. Case sheet of the hospital was marked through Commissioner as Ex.X-1.

6. On a consideration of the evidence available on record, the Tribunal granted compensation under various heads, in all a sum of Rs.4,09,200/-. These appeals arise out of the said award.

7. Heard learned counsel appearing for both the parties.

8. As mentioned earlier both the appeals are concerned only with regard to quantum of compensation. Therefore, the issues whether there was rash and negligence and whether the Insurer is not liable need not be considered in this appeal.

9. The undisputed facts are that there was an accident on 30-10-2002 in which the claimant suffered grievous injuries. It is not in dispute that the said vehicle was insured with the Insurer. There is also no dispute that the claimant was aged 26 years at the time

of accident and that he is a graduate in B.Sc., Computer Science (Ex.A-6 degree certificate, dated 07-03-2003 awarded by Nagarjuna University).

10. The Tribunal estimated the income of the claimant at Rs.60,000/- per annum @ Rs.5,000/- per month, deducted 1/3rd out of the said amount and estimated the loss of earning capacity by applying '17' multiplier at Rs.3,40,000/-. Despite the said estimation, the amount is restricted to Rs.3,00,000/- on the ground that the claim was restricted only to the said amount. In addition, Rs.44,200/- was awarded towards medical expenses, Rs.60,000/- towards pain and suffering, loss of amenities and loss of marriage prospectus. Further a sum of Rs.5,000/- was awarded towards attendant and extra nourishment, in all Rs.4,09,200/-.

11. In order to determine the just and reasonable compensation in the instant case it is necessary to examine the evidence on record.

12. The claimant in his evidence as PW-1 while narrating the manner in which the accident took place, stated that he was aged 26 years and a graduate in B.Sc., Computers. He also applied for B.Ed., seat but on account of the accident he could not continue the education. He marked Exs.A-1 to A-6 and sought for compensation of Rs.6,55,000/-.

13. PW-2 is an Orthopedic Surgeon working in Amaravathi Institute of Medical Sciences in which the claimant underwent treatment as evident from Ex.A-3 wound certificate and Ex.A-4 discharge certificate. PW-2 in his evidence stated that the claimant admitted in the hospital on 31-10-2002 with injuries i.e., crush injury of left ankle and foot and crush injury of right elbow, forearm and hand. He further stated that the claimant underwent amputation of left leg below knee and also amputation of right arm

above elbow. He was discharged from the hospital on 05-12-2002. He estimated the disability for left lower limb at 40-50% and in respect of right upper limb at 80%. He further asserted that the claimant does not do any work either presently or in future. PW-2 being associated with the said hospital also certified that Exs.A-3 and A-4 were issued by the said hospital only. He also certified the medical bills covered under Ex.A-5 and case sheet maintained by the hospital marked as Ex.X-1. In the cross-examination he reiterated that the claimant is only partially stable and walk with an artificial limb. His walking ability is impaired due to amputation of right upper limb and he denied the suggestion that the percentage of disability is highly excessive.

14. The evidence of PW-2 coupled with Exs.A-3 and A-4 it is amply clear that the claimant suffered amputation of right hand above elbow and left leg below knee.

15. Learned counsel appearing for the claimant would submit that the nature of injuries as established would amount to 100% physical disability but not 50% disability as assessed by the Tribunal.

16. Per contra learned counsel appearing for the Insurer would submit that since the Claimant would be able to walk with artificial leg the disability is only 50% as rightly assessed.

17. In ***ORIENTAL INSURANCE COMPANY LIMITED V. RAM PRASAD VARMA AND OTHERS***[1] the Apex Court while considering the question of award of just compensation in respect of permanent disability observed that a claimant who had suffered injuries in a motor vehicle accident resulting in amputation of both legs is entitled to 100% compensation in terms of the First Schedule appended to the Workmen's Compensation Act, 1923. The amount of compensation which represents the loss of income

can be calculated either in terms of the structured formula as contended in the Second Schedule appended to the Motor Vehicles Act or on the basis of the other materials brought on record.

18. After referring to the case in ***NEW INDIA ASSURANCE CO. LTD. V. CHARLIE***[2] further observed that a person, although alive, but when he is not in a position to move and even for every small thing he has to depend upon the services of another, in our opinion, a direction to deduct one-third of the amount from his total income need not always be insisted upon.

19. In that case the Court noticed that the claimant had become totally immobile and having regard to the same confirmed the compensation awarded by the Tribunal by deducting the income tax payable.

20. In the instant case the claimant lost is left leg and the right hand. Therefore, the said loss of limbs amounts to permanent total disablement as per entry in First Schedule appended to the Workmen's Compensation Act, 1923.

21. Even if the documentary evidence on record and the evidence of PW-2 is taken into consideration the disability is 80%. The loss of two limbs, one a leg and a hand can at no stretch of imagination be treated as a normal injury. It cannot be expected that a person loosing two limbs would lead either a normal or a near normal life. It is inferential and natural that such a person requires the assistance of another person for all necessities through out life. Admittedly, the claimant is a graduate in B.Sc., Computer Science. On account of the loss of two limbs it is again natural to infer that the claimant has become immobile and lost the earning capacity and employment opportunities.

22. In my view the Tribunal rightly assessed the income of the

claimant at Rs.5,000/- per month. A graduate in a Computer Science is expected to earn atleast this much of amount. Taking into consideration the minimum disability at 80%, income at Rs.5,000/- per month and the multiplier at '17' as applied by the Tribunal, the loss of earning would be legitimately estimated at Rs.8,16,000/- (5000 x 12 = 60000 x 17 x 18/100 = 8,16,000).

23. However, the claimant have been restricted for a total amount of Rs.6,55,000/- only which included the claim towards pain and suffering, loss of amenities, enjoyment of life, marriage prospectus and expenses towards treatment and attendant services.

24. It is therefore, to be held that the claimant is entitled for enhancement of compensation of Rs.2,45,800/- (6,55,000 – 4,09,200 = 2,45,800). The said amount shall carry on interest at 6% p.a., from the date of petition till the date of realization. The award in M.V.O.P.No.1277 OF 2002, dated 04-07-2006 on the file of the Motor Accidents Claims Tribunal (District Judge), Guntur is modified accordingly.

25. In the result, the M.A.C.M.A.No.2705 of 2007 is dismissed and M.A.C.M.A.No.1973 of 2006 is allowed as indicated above. There shall be no order as to costs in both the appeals.

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NOUSHAD ALI, J

August 19, 2010.

Pn

THE HON'BLE SRI JUSTICE NOUSHAD ALI

M.A.C.M.A.No.2705 of 2007 and 1973 of 2006

August 19, 2010

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[1] (2009) 2 Supreme Court Cases 712

[2] (2005) 10 SCC 720